

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MATCHPOINT SOLUTIONS, a California)	Case No. 12-2472-SC
corporation,)	
)	ORDER DENYING MOTION TO
Plaintiff,)	DISMISS FOR LACK OF
)	<u>SUBJECT-MATTER JURISDICTION</u>
v.)	
)	
INFORMATION MANAGEMENT CONSULTING,)	
INC., a Texas corporation, and)	
FRANCES T. KHUONG, an individual,)	
)	
Defendants.)	
)	

Defendants Information Management Consulting, Inc. ("IMC") and Frances T. Khuong ("Khuong") (collectively, "Defendants") move to dismiss the complaint of Plaintiff Matchpoint Solutions ("Plaintiff") pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction. ECF Nos. 1 ("Compl."), 8 ("Mot."), 9 ("Brief ISO Mot."). Plaintiff filed an opposition. ECF No. 18 ("Opp'n"). Defendants did not file a reply. The Court determines that the motion is suitable for decision without oral argument. Civ. L.R. 7-1(b). For the reasons set forth below, the Court DENIES Defendants' motion.

Plaintiff filed its complaint before this Court on May 15, 2012, asserting seven causes of action arising from an employment

1 dispute in Texas with its former subcontractor Khuong, including
2 Khuong's alleged breach of an amended settlement agreement. The
3 subcontracting agreement between Khuong and Plaintiff provides for
4 venue and personal jurisdiction in the courts of California
5 encompassing Alameda County. See Compl. Ex. A ("Contract") ¶
6 18(g). As to subject-matter jurisdiction, Plaintiff invokes this
7 Court's diversity jurisdiction. Compl. ¶ 4.

8 The requirements of diversity jurisdiction are familiar: There
9 must be complete diversity of citizenship between the parties and
10 an amount in controversy greater than \$75,000. 28 U.S.C. §
11 1332(a)(1). Plaintiff adequately alleges diversity of citizenship.
12 See Compl. ¶¶ 1-3. Defendants' challenge rests on the amount-in-
13 controversy requirement. In their two-page brief, Defendants argue
14 that, because they have moved for dismissal, Plaintiff now bears
15 the burden of showing by a preponderance of the evidence that the
16 amount-in-controversy requirement is satisfied.

17 Defendants are wrong. "Where the plaintiff originally files
18 in federal court, the amount in controversy is determined from the
19 face of the pleadings." Geographic Expeditions, Inc. v. Estate of
20 Lhotka ex rel. Lhotka, 599 F.3d 1102, 1106 (9th Cir. 2010)
21 (internal quotation marks omitted). "To justify dismissal, it must
22 appear to a legal certainty that the claim is really for less than
23 the jurisdictional amount." Id. Here, Plaintiff alleges the
24 requisite amount in controversy. Compl. ¶¶ 68, 88, 96, 103. By
25 failing to address the correct standard, Defendants fail to show to
26 a legal certainty that Plaintiff's allegations are insufficient.
27 Moreover, the Court is satisfied that the Complaint, which seeks,
28 among other things, restitution of over \$21,000, additional tort

1 damages in amounts to be proven, plus punitive damages, meets the
2 amount-in-controversy requirement. Id. at 20-21 (prayer for
3 relief). Accordingly, the Court DENIES Defendants' motion to
4 dismiss for lack of subject-matter jurisdiction.

5 Normally, the Court would not have considered Defendants'
6 motion at all, because Defendants' counsel, Thomas C. Barron, of
7 Dallas, Texas, has failed to show that he is eligible to practice
8 before this Court under Civil Local Rules 11-1 or 11-3, or to
9 comply with other local rules, despite having been ordered to do so
10 by Judge Beeler on July 9, 2012. ECF No. 9. The Court entertained
11 Defendants' motion only because of its independent, overriding duty
12 to ensure that subject-matter jurisdiction is exercised properly.
13 Mr. Barron is advised that further failures to comply with this
14 Court's local rules and orders will not be tolerated. The Court
15 hereby ORDERS Mr. Barron to show by affidavit that he has been
16 admitted to practice before this Court. Mr. Barron shall comply
17 within thirty (30) days of the signature date of this Order.
18 Failure to do so may result in sanctions. Civ. L.R. 11-8.

19
20 IT IS SO ORDERED.

21
22 Dated: October 3, 2012


UNITED STATES DISTRICT JUDGE